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MUR 7273
Response to Complaint
Robert Ritchie p/k/a Kid Rock

Dear Mr. Jordan,

Introduction

This firm represents Mr. Robert James Ritchie in Federal Election Commission Matter Under Review 7273.

In accordance with your procedures and our prior correspondence, we respectfully submit this response and exhibits pursuant to 52 U.S.C. § 30109(a)(1) and 11 C.F.R. § 111.6 in complete rebuttal to the Complainant's allegations. We request the Commission find No Reason to Believe any violation of the Federal Election Campaign Act has occurred and close the file.

Summary

On the one hand, the Complaint (hereinafter "Complaint") in this matter can be easily dismissed: Common Cause appears to be the only people who cannot tell the difference between a patriotic concert promotion and a political campaign. But more seriously, this case is a reminder of the limits on the federal government's power to regulate art.

This matter is about an entertainer whose political message is bound up into his art. Absent any true, overt and actual campaigning for office (and there is none here) the Commission would be well advised to dismiss the Complaint for three reasons: the U.S. Constitution forbids the federal government's censorship of a musician's political or commercial speech; Kid Rock is not an individual and cannot be legally placed on the ballot in Michigan or on an FEC Statement of Candidacy, and no regulations of the FEC were violated in any exploratory effort for office.

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Statement of Facts

Kid Rock is the professional stage name of Robert Ritchie. Kid Rock has been performing music since the early 1990s and has sold over 35 million albums worldwide. Kid Rock has adopted several genres over time starting with rap and hip hop in the 1990s; then migrating to rock, southern and blues in the early 2000s; and performs country and heartland rock music today. Mr. Ritchie performs under the name Kid Rock, but his legal name remains his birth name: Robert James Ritchie. Declaration of Robert Ritchie at ¶ 1, attached hereto as Exhibit 1 (hereinafter "RR Decl.").¹

As part of his 2017 concert tour, Mr. Ritchie and his management² believed that combining an element of politics into his music and concerts would be an excellent way to energize his audience, sell merchandise and remain topical. LT Decl. ¶ 4. Although Mr. Ritchie has clear and long-standing political views, it was the persona of Kid Rock and not the person of Robert Ritchie that was being shaped to run for office. RR Decl. ¶ 3.

The idea turned out to be a commercial and artistic success. LT Decl. ¶ 8. Kid Rock sold out six consecutive shows in Detroit, and also in Indiana and Tennessee, and money was raised for voter registration efforts. Declaration of Blake Harris at ¶ 7, attached hereto as Exhibit 3 (hereinafter "BH Decl."). It was also a political success as many people enjoyed hearing Kid Rock sing and comment on today's current events. But to be clear: there was no actual campaign for Federal office by Mr. Ritchie. RR Decl. ¶¶ 2, 3, 4, 6; LT Decl. ¶ 10.

Designing Kid Rock's concert tour was a very long, expensive and well-thought-out process where the artist, his manager, his record label, and dozens on his creative team explored various themes and images they felt an audience would be most responsive to. The book of songs chosen, the set design, the venues and even the artist's pre-concert persona were all deliberately scripted into a cohesive art form. LT Decl. ¶¶ 1, 2, 3, 9.

As we all know, the first half of 2017 was filled with divisive political issues, cultural debates, government dysfunction and attacks on patriotism. The tour designers believed that many people in Kid Rock's fan base were coalescing around common-sense, anti-status quo and patriotic-themed images and events. LT Decl. ¶¶ 4, 5. Their attitudes fit well with both Mr. Ritchie's own long-standing political views, dissatisfaction with government, love of God and country, and with Kid Rock's artistic image of taking pride in yourself and America. RR Decl. ¶¶ 2, 11.

¹ Although there is a DRAFT watermark, the attached is the final signed and notarized declaration of Mr. Ritchie.

² Mr. Ritchie's manager is Lee Trink of Dare Mighty Entertainment whose comprehensive affidavit is attached to this Response as Exhibit 2 (hereinafter "LT Decl."). Although there is a DRAFT watermark, the attached is the final signed and notarized declaration of Mr. Trink.

The combination of these forces and events made it a natural decision that a "Kid Rock for Senate" element could be added to the concerts and to the celebrity's own daily promotions as a unifying symbol of his upcoming tour. LT Decl. ¶ 6. Each concert opened with political paraphernalia, dancers in American-flag costumes and patriotic-themed music (performed in Kid Rock's own way, of course). Then Kid Rock made a speech that was at times funny, poignant, angry and designed to electrify the audience for the singer's performance.

Thousands of people responded positively to the idea of Kid Rock "taking on Washington." A website was launched called KidRockforsenate.com³ paid for entirely by Mr. Ritchie⁴, various twitter accounts were launched by Kid Rock and other fans, and merchandise was created (in tandem with other concert merchandise) with Kid Rock for Senate logos.⁵ RR Decl. ¶ 8. Upon its initial launch, the website contained the following statement:

"When my name was thrown out there for US Senate I decided to launch kidrockforsenate.com. I was beyond overwhelmed with the response I received from community leaders, D.C. pundits, and blue-collar folks that are just simply tired of the extreme left and right bullshit. As part of the excitement surrounding this possible campaign, I decided to take a hard look to see if there was real support for me as a candidate and my message or if it was just because it was a fresh new news story. The one thing I've seen over and over is that although people are unhappy with the government, too few are even registered to vote or do anything about it. We have over a year left until an actual election, so my first order of business is to get people engaged and registered to vote while continuing to put out my ideas on ways to help working class people in Michigan and America all while still calling out these jackass lawyers who call themselves politicians.

During this time while exploring my candidacy for US Senate, I am creating a 501(c)(4) - a non-profit organization for the promotion of voter registration. Not only can I raise money for this critical cause, but I can help get people registered to vote at my shows. Since the announcement, the media has speculated this was a ploy to sell shirts or promote something. I can tell you, I have no problem selling Kid Rock shirts and yes, I absolutely will use this media circus to sell/promote whatever I damn well please (many other politicians are doing the same thing, they just feed you a bunch of bullshit

³ The Website was launched by Mr. Ritchie for offensive and defensive reasons: it gave fans a place to go, and prevented anyone from stealing the domain name and misappropriating Kid Rock's name or this idea. RR Decl. ¶ 6.

⁴ See Exhibit 4.

⁵ All of the political activity above was paid for Mr. Ritchie personally to ensure no corporate or concert money would be intermingled with the "campaign" part of the concert tour. But to be clear: the "campaign" and the concerts were linked together as one theme for an exciting patriotic show.

about it). But either way, money raised at this time through the sale of merchandise associated with this very possible campaign will go towards our 'register to vote' efforts. One thing is for sure though...The democrats are 'shattin' in their pantaloons' right now...and rightfully so!

We will be scheduling a press conference in the next 6 weeks or so to address this issue amongst others, and if I decide to throw my hat in the ring for US Senate, believe me... it's game on mthrfkrs. -- Kid Rock"⁶

The Kid Rock for Senate merchandise was produced in the same way as the other Kid Rock-branded merchandise created by Warner Brothers Records, Mr. Ritchie's record label and merchandising company for his Kid Rock persona.⁷

Mr. Ritchie wanted the net proceeds from the sale of the Kid Rock for Senate merchandise to go toward voter registration efforts. RR Decl. ¶ 9; BH Decl. ¶¶ 4, 6, 7; LT Decl. ¶ 10. Mr. Ritchie knows the value of voter registration and had Kid Rock participate in Sean Combs' "Coalition of the Willing" voter drives. RR Decl. ¶ 10.

Mr. Ritchie placed two disclaimers on the www.kidrockforsenate.com website: First, saying the site was "Paid by Me" and second, stating "[M]oney raised at this time through the sale of merchandise associated with this very possible campaign will go toward our 'register to vote' efforts."⁸ Mr. Ritchie's management company requested that Warner Brothers Records place a similar disclaimer on the webpage where Kid Rock For Senate merchandise is available for purchase on the online Warner Brothers Records store, and on signage accompanying the sale of merchandise at concerts and events.⁹ The Warner Brothers Records online store states on the page where Kid Rock For Senate merchandise is offered: "All proceeds go to voter registration efforts. This is not a political contribution."¹⁰

During this process, Mr. Ritchie's management worked with campaign finance counsel and monitored internet activity to take down false or misleading statements by others. LT Decl. ¶¶ 10, 11.

Ultimately, Mr. Ritchie decided the best way for him to remain active in politics would be to focus on his upcoming concert tour, continue agitating on the issues and support voter

⁶ See Exhibit 5, emphasis added. This statement has since been moved to Kid Rock's general website, www.kidrock.com.

⁷ See Warner Brothers Records' Response to MUR 7273 dated October 27, 2017.

⁸ See Exhibit 5.

⁹ See Warner Brothers Records' Response to MUR 7273 dated October 27, 2017.

¹⁰ See Exhibit 6.

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registration efforts. RR Decl. ¶ 3. To that end, Mr. Ritchie recently announced on The Howard Stern Radio Show his decision that he would not be running for office. RR Decl. ¶ 12; LT Decl. ¶ 12.

But in direct response to the Complaint and his critics, Mr. Ritchie wants the factual record to be crystal clear: at no time did he decide to be a candidate for Federal office, RR Decl. ¶ 4; he did not encourage others to say he was running, RR Decl. ¶ 5; he never asked anyone for a campaign contribution or a vote, RR Decl. ¶ 7; and that if he ever decides to run for office in the future, there will be no doubt about it, RR Decl. ¶ 12; LT Decl. ¶ 13.

Argument

1. "Kid Rock for Senate" is Protected First Amendment Speech

Robert Ritchie's speech, music, staging and internet activity are inseparable, they are combined together to form the artistic expression: "Kid Rock for Senate." That slogan means middle America should not lose faith in our country and ourselves – we are common-sense people with common-sense ideas. This is a form of art fully protected by the U.S. Constitution from government censorship, *especially because at no time did Kid Rock or anyone else say Robert Ritchie was running for office.*

Justice Souter probably best summarized years of constitutional jurisprudence over the arts when he wrote: "It goes without saying" that artistic expression lies within First Amendment protection. NEA v. Finley 524 U.S. 569, 603 (1998) (The constitutional protection of artistic works turns not on the political significance that may be attributable to such productions but simply on their expressive character. ... Put differently, art is entitled to full protection because our "cultural life," just like our native politics, "rest[s] upon [the] ideal" of governmental viewpoint neutrality, citing Turner Broadcasting System, Inc. v. FCC, 512 U. S. 622, 641 (1994)).¹¹

¹¹ See, e. g., Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., 515 U. S. 557, 569 (1995) (remarking that examples of painting, music, and poetry are "unquestionably shielded"); Ward v. Rock Against Racism, 491 U. S. 781, 790 (1989) ("Music, as a form of expression and communication, is protected under the First Amendment"); Schad v. Mount Ephraim, 452 U. S. 61, 65 (1981) ("Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works, fall within the First Amendment guarantee"); Kaplan v. California, 413 U. S. 115, 119-120 (1973) ("[P]ictures, films, paintings, drawings, and engravings ... have First Amendment protection"); Art "may affect public attitudes and behavior in a variety of ways, ranging from direct espousal of a political or social doctrine to the subtle shaping of thought which characterizes all artistic expression," Joseph Burstyn, Inc. v. Wilson, 343 U. S. 495, 501 (1952).

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As the Declarations of Robert Ritchie and Lee Trink make abundantly clear, "Kid Rock for Senate" was one part of a cohesive art form of music, staging, merchandise sales, and advertising. RR Decl. ¶ 2; LT Decl. ¶¶ 2, 4, 8, 9. It is about combining music with politics, which is hardly new.¹²

Further, Kid Rock's "political campaign" continues a long line of celebrity parodies of running for office: Will Rogers, Gracie Allen, Pat Paulson, Joe Walsh and Jimmy Kimmel are just a few famous examples. These were entertainers doing what they do best: entertaining.

There could have been no serious attempt to censor those celebrities then as there can be to censor Kid Rock today. Because what the Complaint is essentially saying is that Kid Rock must fill out an FEC Form before going on his concert tour. Such prior restraint is absurd. Sure, Mr. Ritchie may hold his views more seriously than other entertainers, but that does not make him a candidate; it makes Kid Rock a very popular artist.

The Federal Election Commission would be well advised to not try and regulate political messages in music. The Solicitor General once tried that with books, with embarrassing results.¹³ The FEC's inquiry should end here, lest someone file a complaint against Wyclef Jean for his song "If I Were President."¹⁴

2. "Kid Rock for Senate" is Protected Commercial Speech

Robert Ritchie's trademarked slogan "Kid Rock for Senate" is his intellectual property; a slogan designed to combine art, politics and commerce into his concert tour.¹⁵ It is speech protected by the U.S. Constitution and recognized as exempt commercial activity by the Federal Election Commission.

Article 1, Section 8 and the First and Fifth Amendments to The U.S. Constitution protect the rights of musicians to create, own and sell their intellectual and physical property. A t-shirt or sign with an entertainer's name and slogan—offered for sale with the proceeds going to voter registration efforts—is exactly the type of speech the Constitution seeks to protect. As the

¹² For example, on at least one concert on Bruce Springsteen's 2004 "Vote for Change" tour, which aimed to rally support to defeat President Bush, Michael Stipe of REM wore a Kerry for President t-shirt.

¹³ See Deputy Solicitor General at Citizens United Supreme Court Hearing March 24, 2009: "We could prohibit the publication of the book using corporate treasury funds." Six months later: "The government's position has changed." Solicitor General Kagan Citizens United Hearing before the Supreme Court, September 9, 2009.

¹⁴ Wyclef Jean for President T-Shirts, by the way, are available at https://www.zazzle.com/wyclef_jean_for_president_t_shirt-235274430961377541

¹⁵ See Exhibit 5, "...I have no problem selling Kid Rock shirts and yes, I absolutely will use this media circus to sell/promote whatever I damn well please..."

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Supreme Court has made clear, commercial advertisements are constitutionally protected because they further a societal interest in the free flow of information.¹⁶ This is true whether the speaker is a person, a corporation or an individual expressing their own, or repeating another person's speech.

Just as Common Cause is trying to raise money for itself by filing this Complaint, Kid Rock is raising money from his concert tour for his commercial and political beliefs. At Kid Rock concerts and on the internet, merchandise is offered for sale with "standard" messages such as "Kid Rock" and political-themed messages such as "Kid Rock for Senate." The processing and sale of either kind of merchandise is subject to an industry-standard merchandise agreement with a commercial vendor, Warner Brothers Records.

Mr. Ritchie sells merchandise, including "Kid Rock for Senate" merchandise, in the ordinary course of running a multimillion dollar, popular, and successful entertainment business. Just as any other entertainer or entrepreneur, he has the right to market his persona, trademarks, slogans and any of his other intellectual property for a living. Absent any potential for corruption, the Constitution fully protects his commercial speech from FEC regulations.

3. Kid Rock is Not An Individual Legally Qualified To Be a Candidate in Michigan For Federal Office

Kid Rock is the professional name Robert Ritchie uses before the public. It is not Mr. Ritchie's real or adoptive name. RR Decl. ¶ 1. Instead, it is an image, a persona, a lively combination of words and art. Similar to Dwayne Johnson as The Rock or Mark Sinclair as Vin Diesel, stage names are one way entertainers reinforce the personalities they want to project onto their audience.

Michigan does not allow people to use stage names, personas or pseudonyms for their place on the ballot. In order to run for the U.S. Senate pursuant to Michigan law, a candidate must use his legal name.¹⁷ Further, Michigan law specifically prohibits the use of a "nickname" unless the nickname is "a recognized diminutive of the candidate's common law name, given

¹⁶ Commercial speech now clearly has prominent place in the rights protected by the First Amendment. In *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980) the Supreme Court set forth a four part test for assessing governmental restrictions on commercial speech: "[First] . . . [the commercial speech] at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest."

¹⁷ M.C.L.A. 168.560(b)(2).

name, or middle name...¹⁸ By Michigan's own statutes, the persona "Kid Rock" is unable to run for Senate because "Kid Rock" is not the legal name of Robert Ritchie, nor is "Kid Rock" a valid nickname for this purpose. Therefore, "Kid Rock For Senate" fails to identify any actual person or individual who can run for office. Common Cause's assertion that Kid Rock has qualified as a candidate for federal office is a legal impossibility under Michigan law. Any purported campaign activity under the name Kid Rock is art, not express advocacy.

This is similar to the FECA's definition that a candidate for federal office is an "individual."¹⁹ Robert Ritchie is an individual but Kid Rock is not; therefore any campaigning for or by Kid Rock is a form of expression, not Federal election activity.²⁰ Indeed, in order for public communication to qualify as "Federal election activity," such communication must "clearly identify" a candidate for Federal office.²¹

A candidate is clearly identified when (i) "the name of the candidate involved appears;" (ii) "a photograph or drawing of the candidate appears," or (iii) "the identity of the candidate is apparent by unambiguous reference."²² None of the Kid Rock For Senate merchandise includes Robert Ritchie's name or his photograph. In addition, the "Kid Rock" persona, while known to some members of the public, is not necessarily recognizable as Robert Ritchie to those outside of the Kid Rock fan base or music industry and therefore is not an unambiguous reference.²³ For these reasons, it is clear the Kid Rock For Senate merchandise fails to clearly identify an individual running for Federal office.

4. "Kid Rock For Senate" Complied with All Applicable FECA Rules

4a. Kid Rock for Senate Complies with the Testing the Waters Regulations

At no time was Robert Ritchie ever a "candidate" under the FECA, or did any of the activities surrounding Kid Rock For Senate merchandise ever go beyond the "testing the waters"

¹⁸ M.C.L.A. 168.560(b)(4).

¹⁹ 52 U.S.C. § 30101(2).

²⁰ This corresponds with The FEC's interest in policing its public record and removing false names on Statements of Candidates pursuant to the requirement that only true, correct, and complete candidate names are allowed under 52 U.S.C. § 30103(a) when filing FEC Form 1. Also see Exhibit 7, an FEC letter dated September 27, 2017 in response to Deez Nuts' filing of FEC Form 1. Just as Deez Nuts was not a valid name for purposes of filing FEC Form 1, Kid Rock would not be valid in the same regard.

²¹ 52 U.S.C. § 30101(20).

²² 52 U.S.C. § 30101(18).

²³ An unambiguous reference to a candidate exists only if "the identity of the . . . candidate would be apparent, i.e., clear to a reasonable, objective person viewing the advertisement in the context of the reference." *Hispanic Leadership Fund, Inc. v. FEC*, 897 F. Supp. 2d 407, 427 (E.D. Va. 2012).

exemption; therefore, there has been no violation of any FECA rules on campaign advocacy or finance.

The FECA defines a "candidate" to be "an individual who seeks nomination for election, or election, to Federal office."²⁴ An individual is statutorily deemed to seek nomination for election, or election, if he has received contributions or made expenditures aggregating in excess of \$5,000, or provided his consent to another person to do either of these on his behalf,²⁵ "for the purpose of influencing any election for Federal office."²⁶

The "testing the waters" exception was a wise creation by the Commission when it recognized that individuals do not become candidates in an instant. Instead, the Commission has given individuals latitude to incur some expenses over time that do not immediately count toward the \$5,000 threshold for candidacy.

The testing the waters exception is not unlimited, and Section 100.72(b) makes clear that the exception is "not applicable to individuals who have decided to become candidates[.]" nor "for activities relevant to conducting a campaign."²⁷ Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

- (1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.
- (2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.
- (3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.
- (4) The individual conducts activities in close proximity to the election or over a protracted period of time.
- (5) The individual has taken action to qualify for the ballot under State law.²⁸

In the case of Kid Rock, we prevail on all five of these tests:

²⁴ 52 U.S.C. § 30101(2).

²⁵ 52 U.S.C. § 30101(2)(A) and (B).

²⁶ 52 U.S.C. § 30101(8)(A)(i) and 52 U.S.C. § 30101(9)(A)(i).

²⁷ 11 C.F.R. § 100.72(b).

²⁸ *Id.*

(1) There has been no general public political advertising, all activity has been confined to the internet on sites owned by Mr. Ritchie.

(2) No money has been raised for any campaign committee.

(3) Mr. Ritchie has not made or authorized any statements that refer to him as a candidate.

(4) The next election is over a year away.

(5) No individual has, and Kid Rock cannot, take any action to qualify for the ballot.

To elaborate on our response to the above tests, the Kid Rock for Senate website made it perfectly clear that Mr. Ritchie had not made any decision on whether to run for Federal office, and was not raising funds for his campaign:

"I decided to take a hard look to see if there is real support for me as a candidate...during this time **while exploring** my candidacy for U.S. Senate, I am creating a 501(c)(4) – a nonprofit organization for voter registration purposes...But either way, **money raised** at this time **through the sale of merchandise** associated with this very possible campaign **will go toward voter registration efforts...**and if I decide to throw my hat in the ring for U.S. Senate, believe me...it's game on..."²⁹

Importantly, the Twitter account @KidRockSenator is *not* the property of Robert Ritchie and is not authorized by him, Kid Rock, or his management company. The Complaint misleads the Commission by saying @KidRockSenator is "associated with" www.kidrockforsenate.com. They are wrong and the evidence they provided at paragraphs 13 and 14 and Exhibit 7 of the Complaint should be struck from consideration.

Finally, the Complaint is out of luck in relying on Advisory Opinion 2015-09's holding that making a statement such as "Smith for Senate" would "generally reflect the individual's decision to become a candidate, and so the statement may trigger candidacy regardless of subsequent retraction attempts."³⁰ That holding was in response to a question that *specifically assumed* "that an individual has raised or spent more than \$5,000 on 'testing the waters' activities," which is not the case here. Therefore, Advisory Opinion 2015-09 is not applicable to Mr. Ritchie's circumstances.

²⁹ See Exhibit 5, emphasis added.

³⁰ FEC, Advisory Opinion 2015-09 at p. 6; Complaint, ¶ 25.

4b. Kid Rock for Senate Is Within the Internet Exception

The "Kid Rock for Senate" website and twitter activity is exempt from the FEC's definitions of contributions and expenditures because it falls within the FEC's "internet exception" from regulated campaign finance activity.

As the Complaint points out, the activity in this case takes place on the internet: on a website owned by Mr. Ritchie,³¹ on a twitter account owned by Mr. Ritchie, and through a longstanding merchandise platform Kid Rock has with Warner Brothers Records. There were no general public political communications expressly advocating Robert Ritchie's election or someone's defeat: just internet activity, merchandise sales and concerts.

When an individual engages in uncompensated "internet activities"—meaning any form of communication distributed over the internet for the purpose of influencing a federal election—neither their services nor the use of equipment to communicate over the internet will constitute expenditures under the Act, unless the communication was placed for a fee on another person's website. 11 CFR 100.155. The Commission has explained that this "broad exemption" was intended to make clear that individuals may engage in their own unfettered political discourse over the internet on their own sites.³²

In addition to there being no attempt to influence an election here, there are no legally cognizable contributions or expenditures occurring either. The activity is occurring on websites and twitter accounts owned by Mr. Ritchie, and the products are advertised for sale on his website. Although Warner Brothers Records operates the sales platform for the Kid Rock for Senate merchandise, that activity is not an advertisement on a Warner Brothers Records website: it is Warner Brother's serving as a commercial vendor—like a store—where you can find the products Kid Rock has advertised for sale.³³

Accordingly, Kid Rock for Senate's internet activity is completely exempt from FEC jurisdiction. The FEC has wisely and unanimously acknowledged that the internet has changed the way we can engage in political advocacy. So has Kid Rock. Fortunately, the Commission has

³¹ See Exhibit 4.

³² Internet Communications, 71 Fed. Reg. 18,589, 18,603 (Apr. 12, 2006); Internet Communications and Activity, FEC Brochure at 1 (May 2006) stating: *The activity would not trigger any registration or reporting requirements with the FEC, citing 11 CFR 100.155.*

³³ See Exhibit 8. This Merchandise Agreement was reached in the parties' ordinary course of business long before Kid Rock for Senate existed, and was specifically amended to make sure any proceeds from the political merchandise were separately accounted for and remitted to the 501(c)(4) and not spent on political activity during the period from July 1, 2017 through October 31, 2017.

removed any awkward pre-internet restrictions in its regulations covering today's digital activity. Acknowledging the internet exception's applicability in this matter will reinforce the agency's commitment to this freedom.

4c. Kid Rock for Senate Signs and Apparel are Not General Public Political Advertising

The Complaint also makes much of the fact that the words "Kid Rock for Senate" could be seen in public on cars, t-shirts and front yards. While it may be silly to think such tokens present any real appearance of corruption, this concern can be easily eliminated: seeing a "Kid Rock for Senate" sign or shirt is seeing the speech of the individual who purchased it, and not of Kid Rock, Robert Ritchie or some non-existent campaign committee.³⁴

In this case, people chose to purchase Kid Rock for Senate merchandise and then display it as they pleased. It became their property. A fan could place the sign inside their house or on their lawn, the bumper sticker could go on a car or a bathroom mirror, the hat could be worn or kept in a drawer as a souvenir. But in no case is there any organized general public political advertising undertaken by Kid Rock to put signs next to highways or pass out shirts for free at his concerts.

Each person purchasing political paraphernalia *is making their own decision on how to speak with their property*. Absent any compelling governmental interest—such as preventing fraud or insurrection—the speech of the individual Kid Rock fans here is protected by well-established Supreme Court precedent. City of Ladue v. Gillen, 512 U.S. 43, 58 (1994) striking city ordinance prohibiting political yard signs because our "special respect for individual liberty in the home has long been part of our culture and our law." Cohen v. California, 403 U.S. 15, 18 (1971) holding that a message on a jacket is the speech of the wearer, not conduct.

4d. Kid Rock for Senate Fits Within the FEC's Commercial Exception

As the affidavits of Mr. Trink and Mr. Ritchie make clear, the underlying purpose of the "Kid Rock for Senate" campaign was artistic and commercial in nature. RR Decl. ¶ 8; LT Decl. ¶ 13. The notion of combining a "political campaign" into the summertime concert and music promotions served to energize sales and interest in Kid Rock and his tour. Sure, many critics went overboard and took the matter too literally, but to be clear: Kid Rock for Senate is for entertainment purposes only.

³⁴ This is similar to the definition of a public communication for disclaimer purposes. 11. C.F.R. § 100.26: A public communication is a broadcast, a newspaper ad, a billboard, or a mass mailing to the general public. The purchase and wearing of a t-shirt cannot be considered advertising to the general public.

Consistent with the U.S. Constitution and the Supreme Court's doctrine of commercial speech, the FEC has recognized that although certain business activities can have an effect on an election, they may be exempt from campaign finance regulation as a "commercial enterprise." If an activity is found to be exempt from the FECA as bona fide commercial activity, any amounts expended or raised from that business are not subject to FEC limits, prohibitions, record keeping or reporting, and would not count toward triggering an individual's candidacy for federal office.

The FEC's most thorough application of the commercial exemption was in MUR 5474 regarding Michael Moore and his film *Fahrenheit 9/11*. In that case, the general counsel recommended no reason to believe the filmmaker violated any provision of the Act because the underlying purpose in creating and distributing the film—despite Mr. Moore's clear desire to also persuade viewers to vote against President Bush—was commercial in nature.

In applying the exception to *Fahrenheit 911*, the Commission noted the exemption was not just based on the content of the film or the ads, but on whether items were sold at their usual and ordinary price for individual use and whether the activity was similar to other profit-making ventures in the industry. Additionally, the Commission examined whether any activity surrounding the film was owned by or coordinated with a candidate, or if any proceeds were raised as a political contribution or given in a federal election.

Finding none of these objective facts—and despite the filmmaker's own subjective intents—the FEC found the film, and its production and advertising to have as its purpose the education and entertainment of an audience for profit.

Such is the case here. Sales of apparel and paraphernalia in support of a concert and album release are as old as the Beatles. In our case, Kid Rock has a long-standing Merchandise Agreement with Warner Brothers Records which is one of America's oldest and most-respected vendors in the music industry. As part of Warner Brother's Records business model, they run an on-line store where artists can design and sell merchandise supporting their concert tours and albums. Warner Brothers Records and Mr. Ritchie have been working together since 2015 under a standard Merchandise Agreement which was recently amended to add Kid Rock for Senate merchandise to the store. The amendment was necessary to make clear the proceeds of the political paraphernalia were not campaign contributions and were to be given to a non-profit of Mr. Ritchie's choosing to conduct voter registration activity.³⁵

³⁵ See Exhibit 8. The amendment to the Agreement will expire on October 31, 2017, which is after Mr. Ritchie's announcement that he is not running for office.

The Kid Rock for Senate merchandise was designed in collaboration with Warner's creative subcontractors all of whom were paid their usual and normal charge. The prices set for the merchandise was a fair retail price. Shipping and handling costs were included, everyone's expenses were deducted, all moneys were accounted for, and the money will be paid to the voter-registration vendor on a pre-determined schedule. No one volunteered their time, no corporation underwrote the activity or subsidized any loss.

None of the decisions made in designing or selling the merchandise were done in connection with a candidate and no proceeds were given to any political committee. And as everyone has testified: the purpose of the merchandise was to support the concert tour, just like hundreds of t-shirt sales do every day for hundreds of other musicians.

Conclusion

As Ken Paulson said, The "First Amendment allows us to say what's on our minds. That freedom doesn't disappear just because it has a backbeat."³⁶ The freedom protects artistic literacy, music, political and commercial speech – many of which are often combined into one expression.

The expression "Kid Rock for Senate" combines all four of those elements without adding a fifth one: an election. Mr. Ritchie has made it clear he is not a candidate, so there is no campaign finance activity to regulate. The Commission should find no reason to believe any violation of law has occurred based on the absence of facts and the abundance of legal precedent.

Sincerely,



Craig Engle

Erica Roque

³⁶ Free speech and Music, A Teachers Guide by Ken Paulson. Executive Director, The First Amendment Center, at p.5

EXHIBIT 1
Declaration of Robert Ritchie

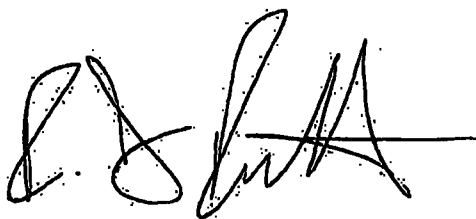
10004410001

Affidavit of Robert James Ritchie

My name is Robert James Ritchie and I hereby declare under oath the following to be true to the best of my knowledge or recollection:

1. I am a five-time Grammy nominated singer, songwriter and musician. Throughout my 30-year career, I have successfully adopted various musical genres and sounds to keep current with the attitudes of the day: from rap and hip-hop in the 1990s to heartland rock today. I perform under the name Kid Rock, but my legal name remains my birth name: Robert James Ritchie.
2. My recently sold-out concerts in Michigan and my upcoming Greatest Show on Earth tour is designed to fit the times: I have never seen the country as politically agitated as it is today. I wanted to reach that audience, and remind Americans there are still some common sense people like me, with common sense ideas, that can reassure middle America we are still a great country.
3. As part of this concert promotion, I thought Kid Rock should run for office. But after talking to my friends, some experts, my manager, and hearing from thousands of my fans I decided the best way to stay involved in politics this year is to continue performing, agitating about issues, and encouraging people to register to vote, not just in Michigan but across the United States.
4. I am not now nor have I ever decided to be a declared candidate for United States Senate from the State of Michigan for the 2018 federal election.
5. A liberal Washington DC-based group that thinks I am running for office doesn't know what they are talking about. They are just repeating fake news and fake websites. They didn't talk to me and I didn't encourage other people to say I was running.
6. I created and paid for kidrockforsenate.com because I didn't want anyone to steal the idea and misuse my name for their own purposes. (For example, the twitter account "Senator Kid Rock" was not mine or approved by me). When I told people my website was "for real" I meant it was mine, and not some imposter's. But obviously: the site did not mean I had decided to run for Senate.
7. I have never asked anyone for campaign money or for a vote, and I don't need to raise \$5,000 from anybody to decide whether to run for Congress.
8. I created Kid Rock for Senate merchandise for my fans to buy just like any of my other concert merchandise. The shirts and signs are just one way to draw attention to me, help advertise my concerts, and frankly to give my fans a new way to have a little fun.

9. I wanted the net proceeds from the sale of the political merchandise to be sent to a non-profit organizer to conduct non-partisan voter registration drives at my concerts in Indiana, Tennessee, and Michigan. I ask you: if I was really running for Senate in Michigan would I be registering people to vote in other states?
10. I know the importance and legalities of voter registration and was part of Sean Combs' Citizen Change's "Coalition of the Willing" which was approved by the FEC in MUR 5684. I intend to keep supporting voter registration efforts and talking politics all across the country for the rest of this year. That is my right.
11. I have never heard of Common Cause and they obviously do not know anything about me, my life, my upbringing, my faith, my respect for the law (including election law), how the entertainment industry works, my concerts, and how I explain my love of America through my art and appearances. Instead this group is trying to turn me into some kind of a criminal so they can raise money off my name. They may be hypocrites, but they have done a great job of giving me more publicity and raising money for my voter registration efforts.
12. A lot of people want me to run for office and someday I just might. I was blessed by the tremendous response I received and laughed at how seriously my "so-called-opponents" were taking this. But as I said to Howard Stern, I am not running now; and if I ever do, there will be no doubt about it. Until then I have oconcerts to give across the United States, but will also remain 100% active as a U.S. citizen by singing and talking about politics, and telling people to register to vote.
13. And commissioners; don't forget to go to kidrock.com/tour to get your greatest show on earth tickets now and to pre-order my upcoming album. I'll autograph them for you.



ROBERT J RITCHIE

notary: Jackie A Pond
Oct 30, 2017.



EXHIBIT 2
Declaration of Lee Trink

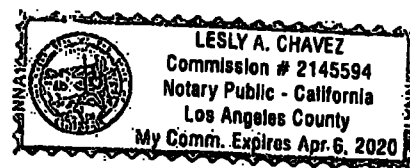
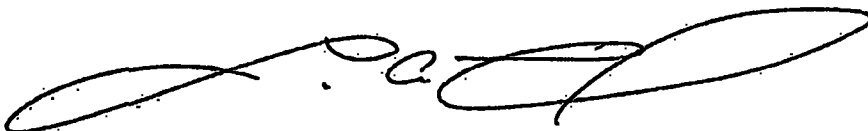
DECLARATION

Affidavit of Lee Trink

1. My name is Lee Trink. I am President of Dare Mighty Entertainment, a firm that manages the concerts, appearances, records and promotions for some of America's leading recording artists. I have been in the music and management business for almost 20 years. Prior to that I received my Law Degree from Brooklyn Law School, and was an Assistant District Attorney at the Brooklyn District Attorney's office.
2. I was previously the Director of Product Development at Atlantic Records, which is where I met Robert Ritchie and "Kid Rock." My philosophy in managing major talent like Mr. Ritchie is that you must believe in your artist, listen and contribute to what your artist wants, and create ways to bring your artist's ideas to life.
3. As Mr. Ritchie's manager, I work on all aspects of his career including tour management, marketing, creative set and stage designs, legal and budgetary issues, protections against piracy, digital and social media content, merchandise decisions, and public appearances.
4. In my work this year with Mr. Ritchie, it became clear to me that he wanted Kid Rock to become more politically active, he has always integrated patriotic common-sense American themes into his music, his stage performances and his day-to-day public image so it was a natural fit.
5. We also believed Kid Rock's core constituency – his fan base of over 6 million people in all 50 states and over 50 countries. – would be receptive to having more political and patriotic-themed creative ideas surrounding our music and stage appearances, and hearing some of our current political culture being addressed.
6. The idea of "Kid Rock" being a Senator became the perfect way to combine Mr. Ritchie's artistic instincts, poke fun at Washington, and create a platform to discuss political views as well as tour and album promotion.
7. Even though "Kid Rock" could not legally run for Senate in Michigan (because that is a persona, not a person), we built a concert and internet-based promotion with the idea that his persona could make an exciting political force.
8. The idea proved to be a tremendous artistic and commercial success: the artistic images on the stage and presentation, the merchandise sales and political chatter all combined into one cohesive artistic message his fan base readily accepted, the media followed and his opponents over-reacted to.
9. In my experience, if an artist has a "theme" or a "vision" in his concerts, his art can take on a new level of engagement by his fans. In Kid Rock's case, we were very successful in artistically adopting a "campaign" theme with a political speech to give the concertgoers a patriotic pro-American experience. We wanted to reassure Kid Rock's fans there are still common sense people with common sense solutions to America's problems. We also

wanted our fans to regain confidence in themselves, especially in Detroit, and to have pride and know their opinions matter.

10. At the same time, we were careful to abide by all Federal Campaign Finance laws in our messaging and merchandise sales. At no time did Mr. Ritchie declare he was running for office. At no time did we encourage people to say Robert Ritchie is running for office. At no time did we solicit any contributions toward a campaign (In fact, Mr. Ritchie paid all of the internet expenses for this so-called exploratory effort personally). At no time did we ask Warner Brothers Records to financially support the "campaign." All merchandise was offered for sale in the ordinary course of business and at regular, market prices. And the net donations from the "Kid Rock for Senate" merchandise went toward voter registration efforts through an amendment to a long-standing, industry-average Merchandise Agreement Kid Rock and our touring company has with Warner Brothers Records.
11. In designing the Kid Rock for Senate website and when making public statements we consulted with an election law counsel who instructed us on how to comply with campaign finance laws. For example, we were clear that while Kid Rock may be *exploring* a run for office, he was not campaigning or asking for money or votes. We monitored web traffic to make sure nothing was inaccurately attributed to us and had to correct some fake news.
12. On October 24, 2017 Kid Rock appeared on the Howard Stern Sirius XM Radio Show and stated that he was not going to be a candidate for U.S. Senate. He said he was overwhelmed by the tremendous positive support he received, and laughed at how seriously some opponents over-reacted to his challenge to the establishment. But in all seriousness, Mr. Ritchie's summer-time fun talking about Kid Rock running for office is over and he has a very rigorous concert schedule planned for the next five months. We are all happy it made a lot of people happy, got some people to register to vote, made us some money, and made some people angry.
13. I do not know whether Robert Ritchie will run for any political office in the future. But I undertook all of the "Kid Rock Campaign" efforts in the summer of 2017 for commercial and artistic reasons and to give his fans a rallying message. We even trademarked the phrase "Kid Rock for Senate" to protect its commercial value and although the merchandise sales are over for now, but a voter-registration theme may continue in his next concert series. If Mr. Ritchie runs for office someday, I am sure he will quite clearly tell America. But that will have to be under his own name, and under separate political management.



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

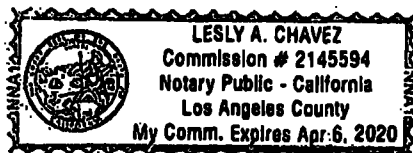
On 10-31-17 before me, Lesly A. Chavez, A Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Lee A. Trink
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Affidavit of Lee Trink Document Date: 10-31-17

Number of Pages: 3 w Ack form Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Lee Trink

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☒ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

EXHIBIT 3
Declaration of Blake Harris

180444JUN90

AFFIDAVIT OF BLAKE HARRIS

I, Blake Harris, hereby declare:

1. I am the President of Leverage Public Strategies, LLC ("LPS"), an Alabama limited liability company.
2. LPS was contracted through CRNC Action, a 501(c)(4) organization, to conduct multiple voter registration drives at Kid Rock concerts in Indiana, Michigan, and Tennessee.
3. At each concert, LPS set up and staffed tables from before the concert venue doors were open until right before Kid Rock went on stage.
4. At each table, there was a large banner that said "Register to Vote Here" as well as pens and voter registration forms for the applicable state.
5. For some concerts, a drawing was held that allowed the winner to have their seats upgraded to the front row. The contest was open to anyone, not just to those who registered to vote.
6. After each concert, LPS followed applicable law in each state to submit the voter registration forms by mail to the applicable state or municipality.
7. It is my understanding that the costs of these voter registration drives were financed from the sale of Kid Rock for Senate merchandise.
8. I declare under penalty of perjury (under the laws of the United States of America) that the foregoing is true and correct.

Dated: November 1, 2017

Debbie A. Stinson
Notary
3-6-18




Blake Harris

www.kidrockforsenate.com – Paid for by Mr. Ritchie



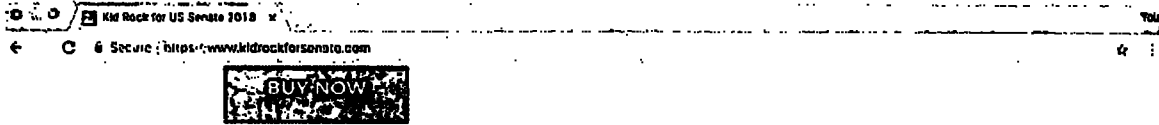
SECRET

1. **المادة 1:** يُعتمد هذا القانون.

180444

EXHIBIT 5

www.kidrockforsenate.com – Statement on Initial Launch

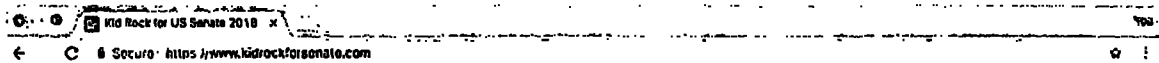


LATEST NEWS

When my name was thrown out there for US Senate I decided to launch kidrockforsenate.com. I was beyond overwhelmed with the response I received from community leaders, D.C. pundit, and blue-collar folks that are just simply tired of the extreme left and right bullshit. As part of the excitement surrounding this possible campaign, I decided to take a hard look to see if there was real support for me as a candidate and my message or if it was just because it was a fresh new news story. The one thing I've seen over and over is that although people are unhappy with the government, too few are even registered to vote or do anything about it. We have over a year left until an actual election, so my first order of business is to get people engaged and registered to vote while continuing to put out my ideas on ways to help working class people in Michigan and America all while still calling out these jackass lawyers who call themselves politicians.

During this time while exploring my candidacy for US Senate, I am creating a 501(c)(4) - a non-profit organization for the promotion of voter registration. Not only can I raise money for this critical cause, but I can help get people registered to vote at my shows. Since the announcement, the media has speculated this was a ploy to sell shirts or promote something. I can tell you, I have no problem selling Kid Rock's shirts and yes, I absolutely will use this media circus to sell/promote whatever I damn well please (many other politicians are doing the same thing, they just feed you a bunch of bullshit about it). But either way, money raised at this time through the sale of merchandise associated with this very possible campaign will go towards our 'register to vote' efforts.

One thing is for sure though...The democrats are 'shattin' in their pants' right now...and rightfully so!

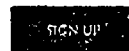


One thing is for sure though...The democrats are 'shattin' in their pants' right now...and rightfully so!

We will be scheduling a press conference in the next 6 weeks or so to address this issue amongst others, and if I decide to throw my hat in the ring for US Senate, believe me... it's game on motherfckers.

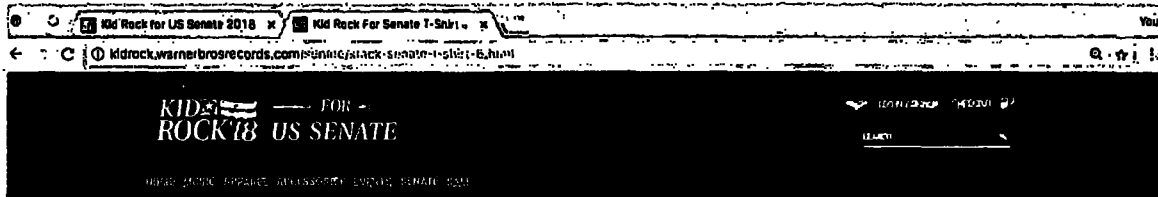
— Kid Rock

SUBSCRIBE FOR EMAIL UPDATES



Print Out to ML

EXHIBIT 6
Warner Brothers Records Online Store – Voter Registration Efforts



KID ROCK KID ROCK FOR SENATE T-SHIRT

Availability: In stock

\$24.99

Is this item in stock in your area?

Yes

Qty:

01 + 02

DETAILS

Kid Rock for US Senate Unisex T-shirt 100% cotton dam fit (short) color Black Made in the USA.
All proceeds go to voter registration efforts, this is not a political contribution.

VIEW LARGER



1000444000-1

EXHIBIT 7
FEC Letter September 27, 2017 to Deez Nuts

Image# 201709270300093149



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-1

September 27, 2017

DEEZ NUTS, TREASURER
DEEZ NUTS
1984 ALE LANE
CEDAR RAPIDS, IA 52401

Response Due Date
11/01/2017

IDENTIFICATION NUMBER: C00584649

REFERENCE: Verification of Form 1 (Statement of Organization)

Dear Treasurer:

It has come to the attention of the Federal Election Commission that you may have failed to include the true, correct, or complete committee name, candidate name, custodian of records information, treasurer information, and bank information under 52 U.S.C. § 30103(a) when you filed FEC Form 1.

In the case of a principal campaign committee of a candidate, the Commission requires the committee to file, and the treasurer to sign, a Statement of Organization, FEC Form 1, no later than 10 days after the candidate issues a Statement of Candidacy. 11 C.F.R. §§ 102.1(a), 102.2(a). For separate segregated funds, the committee must file an FEC Form 1 no later than 10 days after establishment. 11 C.F.R. §§ 102.1(c), 102.2(a). For other political committees, the FEC Form 1 must be filed no later than 10 days after the organization becomes a political committee within the meaning of 11 C.F.R. § 100.5. 11 C.F.R. §§ 102.1(d), 102.2(a). FEC Form 1 must include the name, address, and type of committee, and, if the committee is authorized by a candidate, the name, office sought (including state and Congressional district, when applicable) and party affiliation of the candidate, and the address to which communications should be sent. 11 C.F.R. § 102.2(a). Additionally, if the committee is authorized by a candidate, the committee's name must also include the name of the candidate who authorized the committee. 11 C.F.R. § 102.14(a).

Furthermore, the Commission requires the filing to be true, correct, and complete. When you filed FEC Form 1, you made the following certification: "I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete." See 11 C.F.R. § 104.14(d) (each treasurer is personally responsible for accuracy of any information or statement in a filed report). The Commission also informed you on that form that: "Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 52 U.S.C. § 30109."

1800444001

DEEZ-NUTS

Page 2 of 2.

Additionally, knowingly and willfully making any materially false, fictitious, or fraudulent statement or representation to a federal government agency, including the Federal Election Commission, is punishable under the provisions of 18 U.S.C. § 1001. The Commission may report apparent violations to the appropriate law enforcement authorities. 52 U.S.C. § 30107(a)(9).

If the information you submitted in FEC Form 1 is, to the best of your knowledge and belief, true, correct, and complete, please file a response to confirm this. Electronic filers should file an FEC Form 99 (Miscellaneous Text Submission). Paper filers should send a signed letter via first class mail to the FEC Reports Analysis Division, 999 E Street, NW, Washington, DC 20463. If the information is not true, correct, or complete, or is otherwise inaccurate, please amend your FEC Form 1 filing to reflect the correct information or, in the alternative, please file either a Form 99 or signed letter, as appropriate, indicating your intent to withdraw the Form. Please be advised that once a committee meets the requirements of electronic filing, all subsequent statements, designations, reports, and amendments must be filed electronically. (11 CFR §§ 104.18(a)(2), 104.18(c) and 104.18(f)). Failure to respond within 35 calendar days of the date of this correspondence will result in the Commission removing your FEC Form 1 and related committee filings from the Commission's searchable candidate/committee filings database on the Commission's website and placing the filings under the unverified filings database on the Commission's website. Additionally, any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to any enforcement action.

Please note that in removing the filing from the Commission's searchable database, the Commission is not waiving its authority to pursue or refer an action for false filing under 52 U.S.C. § 30109(a) or otherwise to report such filings under 52 U.S.C. § 30107(a)(9), if it decides to do so.

If you should have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1194.

Sincerely,

Aimee Wechsler

Aimee Wechsler
Campaign Finance Analyst
Reports Analysis Division